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August 27, 2002

EX PARTE

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12 Street, S.W., TW-A325
Washington, DC 20554

**Re: Implementation of the Pay Telephone and Compensation Provisions
of the Telecommunications Act of 1996, CC Docket No. 96-128;
Colorado Payphone Association Petition for Reconsideration Re:
Retroactive Adjustment of Second Report and Order Period
Compensation; Retroactive Adjustment of Interim Compensation**

Dear Ms. Dortch:

On Monday August 26, 2002, Paul Zidlicky, of Sidley Austin Brown & Wood, and I met with Matthew Brill, Commissioner Kathleen Abernathy's Legal Adviser, to discuss issues related to the aforementioned proceeding. Specifically, we reiterated AT&T's position that the Commission should reject the arguments raised by APCC that the Commission should re-examine its decision, made in 1999, to require refunds for the Intermediate Period (Oct. 7, 1997 through April 21, 1999).

The statements made by the AT&T representatives are reflected in AT&T's written submissions in the referenced proceeding. We shared the attached materials during the course of our discussion. In accordance with Section 1.1206 of the Commission's rules, I have submitted two copies of this Notice for each referenced proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Robert W. Quinn, Jr.".

Robert W. Quinn, Jr.

Attachment
cc: Matthew Brill



1120 20th Street, NW
Washington, DC 20036

August 23, 2002

EX PARTE

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12 Street, S.W., TW-A325
Washington, DC 20554

Re: Implementation of the Pay Telephone and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128; Colorado Payphone Association Petition for Reconsideration Re: Retroactive Adjustment of Second Report and Order Period Compensation; Retroactive Adjustment of Interim Compensation

Dear Ms. Dortch:

AT&T Corp. respectfully submits this *ex parte* in response to various *ex parte* submissions filed by the American Public Communications Council ("APCC") in this docket.¹

In its *True Up Ex Partes*, APCC attempts to circumvent its members' obligation to return the overpayments made by IXC's to PSPs between October 7, 1997 and April 21, 1999 (the "Intermediate Period"). First, APCC asserts that PSPs were not compensated for 800 subscriber service between 1992 and 1996 (the "Early Period"), and, therefore, as a matter of equity, should not now be required to true up for overpayments made to PSPs during the Intermediate Period. Second, APCC claims that because IXC's allegedly have recovered the overpayments made during the

¹ See Letter from Robert F. Aldrich to Marlene H. Dortch dated May 23, 2002, "Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996," CC Docket No. 96-128; Letter from Robert F. Aldrich to Marlene H. Dortch dated April 25, 2002, "Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996"; Letter from Albert H. Kramer and Robert F. Aldrich to William F. Caton, Acting Secretary, dated April 15, 2002, "Re: Early Period (1992-96) Compensation" ("APCC's *Early Period Submission*"); Letter from Albert H. Kramer and Robert F. Aldrich to William F. Caton, Acting Secretary, dated April 15, 2002, "Re: Standards for Granting Retroactive True Ups" (collectively "*True Up Ex Partes*").



Intermediate Period through their end user charges, IXC's should not be permitted to again recover these same amounts through retroactive adjustments.

AT&T, Sprint Corporation, and Worldcom, Inc. jointly filed an *ex parte* which focuses mainly on the Early Period; the *ex parte* describes in detail why permitting PSPs to keep overpayments made by IXC's during the Intermediate Period is illegal and should be rejected.² Also, APCC's second assertion that true-up payments would result in a double recovery by IXC's, including AT&T, is wholly inaccurate. During the Intermediate Period, AT&T compensated PSPs for completed payphone calls, regardless of whether AT&T collected its charges from payphone end users. Indeed, AT&T paid PSPs despite the fact that AT&T was unable to recover payments for calls made from over 30% of all payphones. This occurred because AT&T did not receive the necessary FlexANI coding digits that would have enabled calls made from these phones to be identified as payphone calls. AT&T compensated PSPs for calls made from these phones on a per-phone or surrogate basis, although AT&T was unable to recover the charges from the end-user subscribers.

Even when taking the retroactive adjustments into account, AT&T will remain substantially under compensated for the true-up periods by more than \$150 million. Thus, true-ups made to AT&T clearly would not result in any double recovery for AT&T. To the contrary, any exemption from requiring retroactive adjustments would result in double recovery by the PSPs, which have long enjoyed the benefits of AT&T's overpayments.

Moreover, the Commission already has made concessions to PSPs when it considered the impact that the retroactive payments to IXC's would have on PSPs. In determining the method for IXC overpayment recovery, the Commission stated that IXC's may deduct net overpayments (net of payments due for the Intermediate and Interim (Nov. 7, 1997 - Oct. 6, 1997) Periods), or, where the overpayment for the Intermediate Period is larger than the amount owed to the PSP for the Interim Period, then the IXC may deduct the remaining overpayment from future payments to PSPs. Additionally, AT&T voluntarily would commit to continue to make some level of payment to PSPs for the time during which AT&T is recovering its overpayments from the PSPs. Until the Commission issues its order setting forth AT&T's allocation percentage, however, AT&T will be unable to determine the specific minimum payment it is willing to make to each PSP because these amounts are a function of how much each PSP owes AT&T and how much AT&T must pay to each PSP on a quarterly basis at the time the true-up is calculated.

In sum, IXC's are legally entitled to true-ups for overpayments made to PSPs during the Intermediate Period. AT&T will not double recover overpayments for either the Interim or Intermediate Periods, and the Commission and AT&T have made more

² See Letter from Teresa Marrero, AT&T Corp., Larry Fenster, Worldcom, Inc., and John E. Benedict, Sprint Corporation, to Marlene H. Dortch dated July 2, 2002, "Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996," CC Docket No. 96-128.

than sufficient concessions to the PSPs to account for the impact that the true-up payments may have on them.

For these reasons, AT&T respectfully submits that APCC's request that it be permitted to keep over payments from IXC's for the Intermediate Period should be rejected.

Sincerely,



For - Teresa Marrero

cc: Matt Brill
Jeff Carlisle
Jordan Goldstein
Dan Gonzalez
Chris Libertelli
Lynn Milne
Jon Stover